IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

WP(C).No. 26454 of 2006(Y)

PETITIONER:

SUNITHAKUMARI.T.K.,
THOPPIL HOUSE, ANAKULAM P.O.,
ASOKA-685 591, IDUKKI DT.

BY ADV. SMT.K.V.BHADRA KUMARI

RESPONDENT:

THE REGISTRAR,
MAHATHMA GANDHI UNIVERSITY,
PRIYADARSHINI HILLS P.O., KOTTAYAM-686 560.

***ADDL.R2 & R3 ARE IMPLEADED:**

R2. M.G.UNIVERSITY,
REPRESENTED BY REGISTRAR,
PRIYADARSHINI HILLS P.O., KOTTAYAM – 686 560.

R3. DR. A.M.UNNIKRISHNAN,
GANGA THEERTHAM, T.C. 47/1388,
DURGA NAGAR, KARAMANA P.O.,
THIRUVANANTHAPURAM – 695 002.

(ADDL.R2 & R3 ARE IMPLEADED AS PER ORDER DTD. 9/11/2006 IN I.A. NO.15346/2006)

BY ADV. SRI.V.A.MUHAMMED, SC, M.G.UNIVERSITY for R1 & R2
SRI.O.V.RADHAKRISHNAN (SR.) for R3
SMT.K.RADHAMANI AMMA
SRI.ANTONY MUKKATH
SRI.K.V.JOY
SRI.K.RAMACHANDRAN (THYKOODAM)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/02/2007 ALONG WITH WPC NO. 27024 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.26454/2006 Y

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE M.A. DEGREE (PROVISIONAL) CERTIFICATE.**

EXT.P2: **COPY OF THE B.Ed. CERTIFICATE.**

EXT.P3: **COPY OF THE UGC CERTIFICATE.**

EXT.P4: **COPY OF THE NOTIFICATION PUBLISHED IN THE NEWSPAPERS.**

EXT.P5: **COPY OF THE APPOINTMENT ORDER ISSUED BY THE SECOND RESPONDENT DTD. 11/10/2006.**

/TRUE COPY/

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APPENDIX

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EXT.P3: COPY OF THE UGC CERTIFICATE.

EXT.P4: COPY OF THE NOTIFICATION PUBLISHED IN THE NEWSPAPERS.

K.M.JOSEPH, J.

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WP.(C) Nos.26454 & 27024/2006

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Dated this the 28th day of February, 2007

JUDGMENT

Both these writ petitions being connected, they are disposed of by a common judgment.

2. Case of the petitioner in W.P.(C)26454 of 2006 is as follows:

Petitioner is having M.A. Degree in Malayalam with B.Ed., and passed NET and belongs to Scheduled Caste and qualified to apply for the post of Lecturer in Malayalam. Respondent University notified one post of Lecturer in Malayalam vide Ext.P4 notification. Selection list was prepared and one Dr. Jose K. Manual joined duty as Lecturer. On 14.12.2006 one Dr. K.C. Kurian voluntarily retired from the service of the University creating a fresh vacancy and that vacancy was reported to the University in September, 2006, and it is the case of the petitioner that the University is considering to appoint rank No.2 in the select list prepared for the post notified earlier. Subsequently the petitioner has amended the writ petition and produced Ext.P5 order by which the additional third respondent was appointed as Lecturer in Malayalam.

3. In W.P.(C) 27024 of 2006, the case of the petitioner is that he

is teaching in a college at Mahe and she applied to be appointed as Lecturer in Malayalam. The very same allegation is raised, namely, that one vacancy is notified and there was selection in which petitioner was interviewed and list was prepared, in which he is ranked No.3. Reference is also made to the vacancy which had arisen as a result of the voluntary retirement of Dr.K.C. Kurian and Ext.P5 is the appointment order given to Dr. A.M.Unnikrishnan. It is submitted that the case of the petitioners in both these cases is that there is only one post notified and there was no basis for the University to proceed to fill up another vacancy if the post notified was already filled up by making appointment from the select list prepared pursuant to Ext.P1 notification, the purport of which was to fill up only one post.

4. Counter affidavits have been filed. The stand of the University would appear to be that there is no challenge to the process of selection, which has culminated in Dr. A.M.Unnikrishnan being placed in the second rank. There is also no challenge against the fixation of the period of the rank list for one year. It is also pointed out that it is a teaching post and as and when vacancy arose, the person

who was duly selected and placed as No.2 was appointed. There is no violation.

5. Sri. O.V.Radhakrishnan, Senior Counsel would contend that the additional third respondent was appointed against a vacancy which originally existed as on the date of the notification and therefore there is no illegality in appointing him. According to the third respondent the vacancy arose on 15.12.2005.

6. Reliance is placed on the decision reported in **Prem Singh v. Haryana SEB** ((1996) 4 SCC 319), wherein it was held that it may be open to the State, by policy decision taken in emergency, to fill up the vacancies. He also relies on the decision reported in **Virender S. Hooda v. State of Haryana** ((1999) 3 SCC 696). The party respondent also contends that it is competent for the University to fix the validity for one year.

7. Even treating the vacancy as having arisen on 15.12.2005, in the notification only one post is notified and that post, which is notified has been filled up by appointing a person. It cannot be treated as an emergency as to warrant departure from the principle that University

cannot fill up vacancies in excess of that which is notified thus undermining principle of equality under Articles 14 and 16.

8. As far as the petitioner W.P.(C) 26454 of 2006 is concerned, she is a person who had not participated in the earlier selection process. It may be true that the petitioner in the other writ petition may have participated in the selection and he is rank No.3 also. There is no case for the University that the petitioner in W.P.(C) 27024 of 2006 is ineligible because he participated in the earlier selection. I have elaborately considered this question in W.P.(C) 3625 of 2007. I would follow the said decision and therefore in such circumstances I find that the writ petitions are only to be allowed.

Accordingly the writ petitions are allowed and Ext.P5 in both the writ petitions are quashed and the University is directed to undertake the selection in accordance with law at the earliest.

(K.M. JOSEPH, JUDGE)

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K.M.JOSEPH, JJ.

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W.A. No. OF

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JUDGMENT

Dated this the day of February, 2006.